

[illegible]

Case No. 19A-15896-MDX

ORDER FOR SURRENDER OF LICENSE AND CONSENT TO THE SAME

**Holder of License No. 15896
For the Practice of Medicine
In the State of Arizona.**

FINDINGS OF FACT

4. During the course of the Board's investigation, Board staff interviewed four students who had rotated through Respondent's practice during their respective training programs. The students all reported that Respondent did not enter patient rooms to examine the patients with them, and that his physical participation in the patient care process occurred in response to questions by students.

5. The standard of care requires that a physician be physically able to provide the basic skills necessary to safely practice their specialty and, in pediatrics, basic components of infant care require palpation, hip examination by B&O maneuvers, otoscope exam of ears, mouth and nares, deep palpation of the abdomen and testes, and examination of muscle tone and deep tendon reflexes.

6. The standard of care requires a physician supervising students to confirm all findings of the students by the physician's own physical examination, which Respondent did not do.

7. On August 1-2, 2019, Respondent completed a focused practical/fitness for duty evaluation at a Board-approved facility ("Facility"). Based on the evaluation, the Facility opined that Respondent was not fit for independent practice without participation of a nurse practitioner or another physician to gather clinical information and perform necessary evaluations due to Respondent's physical condition.

MD-19-0082B

8. The Board initiated case number MD-19-0082B upon receipt of information indicating that Respondent may have failed to diagnose pregnancy in an incapacitated patient at a long term care facility ("Patient A").

9. According to Respondent, Patient A was admitted to the long term care facility in 1992 at three years of age. Per Respondent, he treated Patient A from 1992 until he transferred attending physician duties to another physician on or about September 18, 2018 (with the exception of a few years beginning in 2002 when Respondent was not a physician at the facility). Per Respondent, "he provided attending physician treatment in the form of annual examinations and external examinations every three to four months and as needed." Respondent performed his last annual examination

1 on this patient on April 16, 2018, and treated her for a cyst on September 13, 2018, just a
2 few days prior to transferring her care to another provider.

3 10. Patient A, who is globally neurologically incomplete, gastric tube feeding
4 dependent, and on ventilator support, gave birth on December 29, 2018, after an
5 undiagnosed pregnancy due to apparent sexual assault by another employee at the long
6 term care facility.

7 11. During the course of the Board's investigation, Board staff requested
8 Medical Consultant ("MC") review of the care and treatment provided by Respondent to
9 Patient A. Two MCs reviewed approximately four years of progress notes in the patient
10 chart beginning with an October 25, 2015, entry.

11 12. The standard of care requires monthly examinations documenting goals of
12 care, as well as an annual mental health assessment.

13 13. Respondent deviated from the standard of care by failing to perform monthly
14 examinations and an annual mental health assessment of Patient A.

15 14. A physician is required to maintain adequate legible medical records
16 containing, at a minimum, sufficient information to identify the patient, support the
17 diagnosis, justify the treatment, accurately document the results, indicate advice and
18 cautionary warnings provided to the patient and provide sufficient information for another
19 practitioner to assume continuity of the patient's care at any point in the course of
20 treatment. A.R.S. § 32-1401(2). Respondent's medical record for Patient A was
21 inadequate in that it was incomplete, inaccurate, and at times, unsigned. Additionally,
22 Respondent failed to document in the chart a transfer of care to the subsequent physician
23 nor a summary upon said transfer.

24 15. On September 12, 2019, based on the evidence presented, the Board found
25 that the public health, safety, or welfare imperatively required emergency action and

1 voted unanimously to summarily suspend Respondent's license. Interim Findings of Fact,
2 Conclusions of Law and Order for Summary Suspension of License were issued on
3 September 13, 2019.

4 16. Respondent has decided to retire from the practice of medicine and not
5 contest the actions of the Medical Board or this Order.

6 CONCLUSIONS OF LAW

7 1. The Board possesses jurisdiction over the subject matter hereof and over
8 Respondent.

9 2. The Board possesses statutory authority to enter into a consent agreement
10 with a physician and accept the surrender of an active license from a physician who
11 admits to having committed an act of unprofessional conduct. A.R.S. § 32-1451(T)(2).

12 3. The conduct and circumstances described above constitute unprofessional
13 conduct pursuant to A.R.S. § 32-1401(27)(e) ("Failing or refusing to maintain adequate
14 records on a patient.").

15 4. The conduct and circumstances described above constitute unprofessional
16 conduct pursuant to A.R.S. § 32-1401(27)(r) ("Any conduct or practice that is or might be
17 harmful or dangerous to the health of the patient or the public.").

18 5. The Board possesses statutory authority to enter into a consent agreement
19 with a physician and accept the surrender of an active license from a physician who
20 admits to having committed an act of unprofessional conduct. A.R.S. § 32-1451(T)(2).

21 ORDER

22 IT IS HEREBY ORDERED THAT Respondent immediately surrender License
23 Number 15896 issued to Phillip Gear, M.D., for the practice of allopathic medicine in the
24 State of Arizona, and return his certificate of licensure to the Board.

25 DATED and effective this 8th day of November, 2019.

1
2 ARIZONA MEDICAL BOARD

3
4 By:

5 Patricia E. McSorley
6 Executive Director
7

8 **CONSENT TO ENTRY OF ORDER**

9 1. Respondent has read and understands this Consent Agreement and the
10 stipulated Findings of Fact, Conclusions of Law and Order ("Order"). Respondent
11 acknowledges he has the right to consult with legal counsel regarding this matter.

12 2. Respondent acknowledges and agrees that this Order is entered into freely
13 and voluntarily and that no promise was made or coercion used to induce such entry.

14 3. By consenting to this Order, Respondent voluntarily relinquishes any rights
15 to a hearing or judicial review in state or federal court on the matters alleged, or to
16 challenge this Order in its entirety as issued by the Board, and waives any other cause of
17 action related thereto or arising from said Order.

18 4. The Order is not effective until approved by the Board and signed by its
19 Executive Director.

20 5. All admissions made by Respondent are solely for final disposition of this
21 matter and any subsequent related administrative proceedings or civil litigation involving
22 the Board and Respondent. Therefore, said admissions by Respondent are not intended
23 or made for any other use, such as in the context of another state or federal government
24 regulatory agency proceeding, civil or criminal court proceeding, in the State of Arizona or
25 any other state or federal court.

1 6. Upon signing this agreement, and returning this document (or a copy
2 thereof) to the Board's Executive Director, Respondent may not revoke the consent to the
3 entry of the Order. Respondent may not make any modifications to the document. Any
4 modifications to this original document are ineffective and void unless mutually approved
5 by the parties.

6 7. This Order is a public record that will be publicly disseminated as a formal
7 disciplinary action of the Board and will be reported to the National Practitioner's Data
8 Bank and on the Board's web site as a disciplinary action.

9 8. If the Board does not adopt this Order, Respondent will not assert as a
10 defense that the Board's consideration of the Order constitutes bias, prejudice,
11 prejudgment or other similar defense.

12 9. *Respondent has read and understands the terms of this agreement.*

13
14 
15 PHILLIP GEAR, M.D.

Dated: 10-28-19

16 EXECUTED COPY of the foregoing emailed and
17 mailed by US Mail this 8th day of November, 2019 to:

18 Phillip Gear, M.D.
19 Address of Record

20 Rachel W. Maron, Esq.
21 David Selden, Esq.
22 Richard Mear, Esq.
23 The Cavanagh Law Firm
24 1850 North Central Avenue, Suite 2400
25 Phoenix, Arizona 85004
Attorneys for Respondent

ORIGINAL of the foregoing filed this
8th day of November 2019 with:

ARIZONA MEDICAL BOARD
1740 W. Adams

1 Phoenix, Arizona 85007

2 Michelle Rabes

3 Board Staff

4 AF:yfl - #8295323

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25